Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

No. 97-1397

KAREN DERZACK AND MICHAEL DERZACK,

Petitioners,

v.

ALLEGHENY COUNTY CHILDREN
AND YOUTH SERVICES,

Respondent

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

REPLY BRIEF

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STATEMENT OF QUESTION PRESENTED

Did it violate due process of law to order the withdrawal of Petitioners' Adoption Petition and Report of Intermediary upon motion of the adverse party and the Dismissal of Petitioners' Report of Intention to Adopt without a hearing, proper notice, consent or any other safeguard of due process?

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REPLY BRIEF

REASONS FOR GRANTING THE PETITION

A. This issue has not been rendered moot.

On March 9, 1998 at No. 97-1105, this Honorable Court denied the Derzacks' Petition for Writ of Certiorari regarding their claim that their due process rights were violated when the minor children were removed from their care while the Derzacks were not foster parents but were prospective adoptive parents.

The mere fact that this Court declined to review the due process violation pursuant to the children's removal from the Derzacks' home does not mean that this Court should also decline to review the due process violation regarding the trial court's order disposing of the adoption filings of Petitioners.

Respondent argues that once the juvenile court removed the children from the Derzacks' home, they were no longer considered the adoptive resource for the children and that the order of the trial court was proper.

However, following the removal of the children, the Derzacks continued to have pending before the Orphans' Court, for eight months, their Petition for Adoption. Thus, an adoption hearing should, pursuant to law, have been scheduled. At said hearing, the court could have determined that the Derzacks, the prospective adoptive parents and the only parents known to one of the minor children for the majority of his life, were suitable as an adoptive family for the children.

B. There are important issues at stake in this case.

The Derzacks do not argue over the issue of the custody of foster children. The Derzacks were never a foster family for the minor children or ever a registered foster family. During the relevant time period, the Derzacks were the prospective adoptive parents for the minor children, as was noted by the Pennsylvania

Superior Court in its opinion on the case which was before this Honorable Court at No. 97-1105.

Respondent has attempted to label the Derzacks as foster parents rather than referring to their actual status as prospective adoptive parents despite the finding of the Pennsylvania Superior Court in terms of standing and the Derzacks' status.

As the trial court noted in its opinion of June 25, 1995 (See Appendix), the Derzacks were awarded final custody of the minor children in October of 1994 because of psychological bonding and the possible sexual abuse of the children by their siblings. The trial court then ordered Respondent, which was the subject of a lawsuit filed by Petitioners, to assist Petitioners in adopting the minor children.

Respondent proceeded to initiate contempt proceedings against Petitioners, among other allegations, for failing to push visitation between the

minor children and the siblings who had sexually abused the two and three year old minor children.

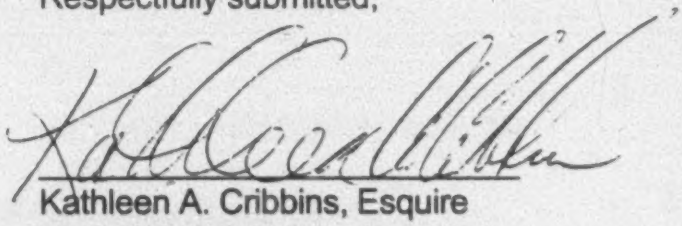
Prospective adoptive parents who are the only parents known to a child for the greater portion of this life, have a greater interest in and a far more important relationship with, said child than foster families.

In Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977), this Honorable Court declined to expand a constitutionally protected liberty interest to foster families. However, the Derzacks were not a foster family but a psychologically bonded adoptive family deserving of constitutional protection and of due process in the consideration of their Petition for Adoption (Santosky v. Kramer, 455 U.S. 745 (1982).

CONCLUSION

This case has not been rendered moot by the previous decision of this court and the Derzacks' Petition should be granted.

Respectfully submitted,



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APPENDIX

**EXCERPTS FROM OPINION OF
HON. JOSEPH A. JAFFE of June 25, 1995**

IN RE: Byron & Andre Jeffrey, Shondre & Wesley Barnes and Byrae Griffin

**DOCKET NO. 1608-92, 2622-25-91
IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA -
JUVENILE DIVISION**

. . . The second major point of contention raised by Mother in her Statement of Matters centered on the awarding of custody of Byron and Byrae to the Derzack family. Mother cites numerous errors related to this issue which we shall address in our general discussion of the basis for our decision granting custody to Mr. and Mrs. Derzack.

. . . . .

In light of all of the testimony at the numerous hearings and considering all factors relative to the best interests of Byron, this Court determined that Byron and Byrae should be placed in the custody of Mr. and Mrs.

Derzack. Among the factors this Court considered in making its determination, the most compelling were the psychological bonding between Byron and the Derzack family and between Byron and Byrae, and the serious concerns this Court has about the ability of Ms. Ellis to care for two additional young children. While race was an additional factor considered by this Court, it was not an overriding concern and ultimately, was outweighed by the other factors as will be discussed more fully below.

. . . .

In addition to the psychological reasons in favor of placing Byron and Byrae together, this Court also considered safety reasons which surfaced during two of the hearings. During the September 16, 1994 hearing and again at the October 5, 1994 hearing, evidence was presented that Mother's three older children who reside with Ms. Ellis were sexually abused by one of Mother's paramours and concern was expressed that Byron and Byrae were at risk of being possible victims of their

siblings. (Tr. 5 at 43-44, Tr. 6 at 253-254). Indeed the testimony established that there was reason to believe that Byron and Byrae may have been sexually abused by one or more of their three older siblings in September, 1994 while they were temporarily residing with Ms. Ellis (Tr. 5 at 43-44, Tr. 6 at 40-43).

Based upon that information this Court was very concerned about Byrae's safety if she were left in the custody of Ms. Ellis and Byron were placed with the Derzack family.

Thus, despite the absence of an established relationship between Byrae and Mr. and Mrs. Derzack, this Court felt that the evidence and case law supported her joint placement with Byron in the home of Mr. and Mrs. Derzack.